

## Elder Law: Community Spouses and their role in senior care

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By Julian Gray and Frank Petrich

Community Spouse, Community Spouse Resource Allowance (Minimum and Maximum), Monthly Maintenance Needs Allowance (Minimum and Maximum), Penalty Divisor, Resource Limit, Exempt and non-Exempt Resources -- should you care what these terms are?

Well, if you're part of a married couple and you're concerned about the possible need for long-term care services for you and/or your spouse, you should. We'll try to explain these terms and the numbers associated with them (some of which are new as of Jan. 1).

Let's do this by an example. Mr. and Mrs. Atkins have been married for almost 40 years. Mr. Atkins, 63, was just diagnosed with Alzheimer's disease. With support, Mrs. Atkins feels she can take care of her husband at home for some limited period of time. However, she realizes that, based upon her conversations with the physician, she needs to plan for the probable need for nursing facility care for her husband.

How can she pay for his care?

Well, the options are relatively few: privately out of their monies, long-term care insurance (if they are fortunate enough to have it), Medical Assistance or the Medicare program.

Let's start first with the average monthly cost of nursing home care in Pennsylvania, which is \$266.60 a day, \$8,112 a month or \$97,346 a year (this is just an average, with urban areas generally being higher). These figures also constitute what is known as the "Penalty Divisor." This divisor amount is used to divide into the amount of money one may have gifted (given away) in the five years preceding an application for Medical Assistance, which would then create a period of ineligibility for Medical Assistance. This Penalty Divisor is generally adjusted each January.

Medical Assistance is a joint federal/state program that can pay for nursing facility care for people who meet both the financial and medical eligibility criteria. Approximately 70 percent of residents in nursing homes have their care paid for through this program. Thus, we'll concentrate on some of the basics of this payment method for married couples. Under the 1988 Medicare Catastrophic Coverage Act, Congress established a process of allocating income and resources between the "Institutionalized Spouse" (Mr. Atkins) and the "Community Spouse" (Mrs. Atkins).

To determine Mr. Atkins' eligibility for Medical Assistance, we first have to determine what the couple's resources are. Fortunately for Mrs. Atkins, their house ("principal place of residence") and car are two examples of "exempt" (non-countable) resources. Everything else they own, either individually or together (except for Mrs. Atkins' IRA), gets put into a common "non-exempt" pot.

Once we have the pot, Mrs. Atkins is entitled, as a "Community Spouse," to keep one-half of that amount. This is called the "Community Spouse Resource Allowance" and is subject to a minimum of \$22,728 and a maximum of \$113,640. These amounts are generally adjusted in January. Two examples:

1. They have total countable resources of \$30,000. Mrs. Atkins can keep the minimum amount of \$22,728.
2. They have total countable resources of \$300,000. Mrs. Atkins can keep only an amount up to the maximum (\$113,640).

In both of these examples, the amounts greater than what Mrs. Atkins can keep are to be used for Mr. Atkins' nursing facility care or to purchase certain "exempt assets" (an irrevocable burial account, and/or a new, replacement car being just two examples).

Now we have to look at what Mrs. Atkins will need in the way of income to live on so she does not become impoverished as a result of her husband being in a nursing facility.

Mrs. Atkins is entitled to a "Monthly Minimum Maintenance Needs Allowance" of \$1,838.75 a month with a "Monthly Maximum Maintenance Needs Allowance" of \$2,841 a month. These figures are adjusted, based upon inflation; the maximum in January and the minimum in July. Two examples:

1. Mrs. Atkins has a monthly Social Security amount of \$500. She has no other income. Thus -- between a combination of Mr. Atkins' Social Security, his pension and the possible purchase from their countable resources of an annuity (a column for next month) -- her income can become the \$1,838.75 a month minimum.

2. Mrs. Atkins has a monthly pension and Social Security of \$3,000. She thus already meets the monthly maximum amount to which she would be entitled.

It must also be noted that there are times when the maximum can be exceeded, such as unique hardship situations (for example: one spouse is in a nursing facility and the other in assisted living with its significant monthly living costs).

We have tried to give the reader a brief overview of a very complex subject. There are many moving wheels and parts when trying to determine what resources a Community Spouse can keep, and additionally purchase, and how to generate sufficient income for the Community Spouse not to be impoverished.

These decisions and actions are also being done under severe stress. Thus, competent assistance is usually needed to gather the relevant financial information and to review the appropriate strategies to follow. It ain't for the faint of heart!

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